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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,959	05/22/2006	Larry R. Krepki	C1271.70022US02	9672
23628	7590	05/10/2010		
WOLF GREENFIELD & SACKS, P.C. 600 ATLANTIC AVENUE BOSTON, MA 02210-2206			EXAMINER	
			DESAI, RITA J	
			ART UNIT	PAPER NUMBER
			1625	
			MAIL DATE	DELIVERY MODE
			05/10/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,959	<b>Applicant(s)</b> KREPSKI ET AL.
	<b>Examiner</b> Rita J. Desai	<b>Art Unit</b> 1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 2/3/2010.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,5,8,11,18,20-23,26,29-32,36-39,41-43,54 and 55 is/are pending in the application.
- 4a) Of the above claim(s) 30-32, 43, 55 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,5,8,11,18,20-23,26,29,36-39,41-42,54 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

Claims 1, 2, 5, 8, 11, 18, 20-23, 26, 29-32, 36-39, 41-43, 54,55. are pending.

Claims 30-32, 43, 55 are withdrawn method claims.

Response to the arguments.

The claims have not been amended tot the elected group. X is an alkylene chain in the elected group. Optionally interrupting it with an O will no longer be called an alkylene chain.

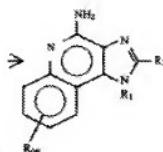
The rejection under 35 USC 112 has been withdrawn as applicants have amended the claims.

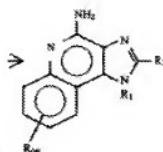
The rejection under 35 USC 102 e over U.S. 2005/0070460 ("the '460 publication"),U.S. 2007/0292456 ("the '456 publication"), WO 2005/0162273 ("the '273 publication"), and WO 2005/016275 ("the '275 publication") has been withdrawn as applicants have amended the claims or the specific -X-C=O-R1-1 is not disclosed.

The 103 rejection under 35 USC 102(e) date over US 7,091, 214 and also over WO 2005016275 has been withdrawn as applicants have provided a statement of common ownership and have also amended the claims.

Regarding the US 5756747 ( by mistake the examiner had put down 6, 756,747, the applicants have correctly pointed out that it is US 5,756,747), The rejection has been withdrawn. The claims have -X-Z-R1-1 group.

Where in Z is a C=O, R1-1 is an alkyl or a H or a phenyl group.



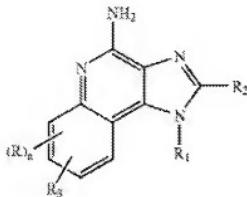
US 5756747 discloses the compounds of the formula  as intermediates wherein R<sub>1</sub> is amongst others is an acyloxy, but applicants X is an alkylene , Z is a C=O and R<sub>1-1</sub> is a H, alkyl, phenyl or N(CH<sub>3</sub>) (OCH<sub>3</sub>) which may be an acyl group but not an acyloxy.

The double patenting rejections over US 2009/0163532 or 11/883665 and 10/595,049 has been maintained as applicants have not traversed it and made any comments at this time.

The ODP rejection over US 7,091,214 is maintained.

The US '214 patent, discloses R1 to be

II



wherein:

R is selected from the group consisting of alkyl, alkoxy, hydroxy, and trifluoromethyl;

n is 0 or 1;

R<sub>1</sub> is selected from the group consisting of:

—R<sub>4</sub>,

—X—R<sub>4</sub>,

—X—Y—R<sub>4</sub>,

—X—Y—X—Y—R<sub>4</sub>, and

—X—R<sub>5</sub>;

R<sub>2</sub> is selected from the group consisting of:

—R<sub>4</sub>,

—X—R<sub>4</sub>,

—X—Y—R<sub>4</sub>, and

—X—R<sub>5</sub>;

X is an alkylene, y is CR<sub>6</sub> and R<sub>6</sub> can be an oxygen and R<sub>4</sub> is an H, alkyl or an aryl.,

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rita J. Desai whose telephone number is 571-272-0684. The examiner can normally be reached on Monday - Friday, flex time..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rita J. Desai/  
Primary Examiner, Art Unit 1625

May 4, 2010 .